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BILL ANALYSIS

S.B. 452
By: Krier

Senate Jurisprudence Committee
5-6-89
Enrolled

BACKGROUND

In 1983 statutes relating to property law were codified in the Texas Property Code. Some of the language changes from the source statute to the codification resulted in substantive changes to property law. Several of these alterations were corrected and clarified by Senate Bill 1037 in the 70th Legislative Session. However, not all of the problems in the codification were dealt with by Senate Bill 1037, and further amendments to the Property Code during the 70th Legislative Session created confusion either in the numbering system or in the content of new matters as they relate to property law set forth in the Code.

PURPOSE

The bill would amend the Texas Property Code to make certain technical and non-substantive changes to correct or clarify amendments introduced during the 70th Legislative Session. It would make a substantive change in the law by imposing a time period during which refileing of a condemnation proceeding that is substantially the same as a previous condemnation proceeding is prohibited. It would allow a person whose property has been foreclosed to request a court to determine the fair market value of the real property and to bring action to recover a deficiency.

EFFECT ON CURRENT LAW

Amends the Property Code.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.019(a), Property Code, to prevent a condemnor from initiating a new proceeding involving substantially the same condemnation in an attempt to lower an award within three years of dismissal of the first proceedings.

SECTION 2. Amends Section 21.020, Property Code, to require the court to enter the commissioners's initial reward for the second proceedings if the condemnor files a petition to condemn substantially the same property before the three year expiration period.

SECTION 3. Amends Section 21.042(a), Property Code, to require the special commissioner to enter a finding of the amount offered to the property owner by the condemnor before the proceedings began.

SECTION 4. Amends Section 22.021(d), Property Code, to provide that a defendant may be liable for damages under this section that occurred two years before the action was filed to the extent of the excess value of improvements, if the value of the property improvements by the defendant exceed the value of the use and occupation during that two year period.

SECTION 5. Reenacts Section 24.0062(b), Property Code, as added by Chapters 314 and 745, Acts of the 70th legislature, Regular Session, 1987, relating to property stored in a public warehouse under a writ of possession.

SECTION 6. Amends Section 41.001(b), Property Code, allowing an encumbrance to be fixed on homestead property for work and material used for improvements on the property if contracted in writing as provided by Section 53.059(a), (b), and (c).

SECTION 7. Amends Section 41.005(c), Property Code, to require the name of the current record title holder as information necessary in designating property as a homestead.

SECTION 8. Amends Sections 51.002(b) and (d), Property Code, as follows:

(b) Requires that a notice of sale of real property under a contract lien indicate the earliest time the sale will begin.

(d) Makes nonsubstantive language change.

SECTION 9. Amends Chapter 51, Property Code, by adding Section 51.003, as follows:

Sec. 51.003. (a) Requires any action brought to recover a deficiency between the price at which real property is sold and the unpaid balance of the indebtedness to be brought within two years of the foreclosure sale and to be governed by this section.

(b) Allows a person against whom a recovery is sought to request the court to determine the fair market value of the real property as of the date of the foreclosure and requires the court to determine the value after competent evidence has been introduced.

(c) Provides that if the court determines that the value is greater than the sale price of the property, any person against whom recovery is sought is entitled to an offset against the deficiency. Requires the sale price to be used to calculate the deficiency if no party requests that a determination be made or if such a request can not be fulfilled because competent evidence was not introduced.

(d) Requires money received by a lender from private mortgage insurance to be credited to the borrower's account prior to bringing an action at law for any deficiency owed by the borrower.

(e) Provides that this section is applicable to any action to collect a deficiency resulting from a nonjudicial foreclosure of any mortgage or deed of trust conducted after June 1, 1989.

SECTION 10. Amends Section 52.001, Property Code, to provide the a first or subsequent abstract of judgment constitutes a lien on real property under certain circumstances if the judgment is not then dormant.

SECTION 11. Amends Section 53.059(b), Property Code, and adds Subsections (f) and (g), Property Code, as follows:

(b) Requires the execution of contract before material is furnished or labor is performed, and in a manner necessary for the conveyance of a homestead.

(f) Sets forth required language in a contract notifying the owner of the potential loss of home ownership rights if contractual terms are violated.

(g) Provides that the violation of Subsection (f) is a deceptive act within the meaning of Section 17.45, Business & Commerce Code, and is punishable under the Deceptive Trade Practices-Consumer Protection Act, Subchapter E, Chapter 17, Business & Commerce Code.

SECTION 12. Amends Section 54.0006, Property Code, to include a person's agent, attorney, assign or other legal representative as

individuals who may apply to an appropriate justice of the peace for a distress warrant. (Agricultural landlord's lien).

SECTION 13. Amends Section 54.025, Property Code, to include a person's agent, attorney assign, or other legal representative as individuals who may apply to an appropriate justice of the peace for a distress warrant. (Building landlord's lien).

SECTION 14. Section 92.008, Property Code, as redesignated by Chapter 683, Acts of the 70th Legislature, Regular Session, 1987 is reenacted.

SECTION 15. Amends Section 92.158, Property Code, to provide the landlord with a defense to liability under Section 92.156 if the tenant has not fully paid all the rent due on the date the tenant gives a request under Subsection (a) of Section 92.153 or notice under Section 92.156.

SECTION 16. Amends Section 92.204, Property Code, to make a nonsubstantive change, renumbering Section 92.202 as 92.201.

SECTION 17. Title 8, Property Code is amended by adding Chapter 93 as follows:

CHAPTER 93. COMMERCIAL TENANCIES

Sec. 93.001(a) Provides that this chapter applies only to the relationship between landlords and tenants of commercial property.

(b) Defines "commercial property."

Sec.93.002(a) Prevents the landlord or landlord's agent from interrupting utility services paid for directly to the utility company by the tenant unless the interruption results from legitimate repairs, construction, or an emergency.

(b) Prohibits the landlord from denying a tenant entrance to the leased property except by judicial process, unless the exclusion results from:

- (1) bona fide repairs, construction or an emergency,
- (2) the removal of contents abandoned by the tenant, or
- (3) the changing of the door lock of a tenant delinquent in payments.

(c) Provides that a commercial tenant is presumed to have abandoned the premise if a substantial amount of property is being, or has been removed from the premises and the removal is not part of the tenant's usual business.

(d) Allows the landlord to remove and store abandoned property, and to dispose of the material if the tenant does not claim the property within sixty days after sending certified notification.

(e) Requires a landlord or landlord's agent changing the door lock of a commercial tenant delinquent in paying rent to place a written notice on the tenant's front door stating the name and address or telephone number of the party from whom the key may be obtained. Requires the new key to be provided only during the tenant's regular business hours and only if the tenant pays the delinquent rent.

(f) Provides that if a landlord or landlord's agent violates this section, the tenant may:

- (1) either recover possession of the premise or terminate the lease, and
- (2) recover from the landlord an amount equal to the actual damages, one month's rent, and reasonable attorney's fees, less any sums for which the tenant is liable.

(g) Provides that a lease provision supersedes this section in the event of conflict.

SECTION 18. (a) Repealer. Section 41.005, as added by Chapter 116, Acts of the 70th Legislature, Regular Session, 1987, and Section 92.008, Property Code.

(b) Section 91.002, Property Code, as amended by Chapter 826, Acts of 70th Legislature, Regular Session, 1987, is repealed.

SECTION 19. Effective date: September 1, 1989.

SECTION 20. Emergency clause.